

AMENDED IN SENATE MARCH 26, 2014

AMENDED IN SENATE FEBRUARY 14, 2014

SENATE BILL

No. 894

Introduced by Senator Corbett

January 13, 2014

An act to amend Section 1569.525 of the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

SB 894, as amended, Corbett. Residential care facilities for the elderly: revocation of license.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly. These provisions are administered by the State Department of Social Services. Violation of these provisions is a misdemeanor.

Existing law requires, if the Director of Social Services determines that it is necessary to temporarily suspend a license of a residential care facility for the elderly in order to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department to make every effort to minimize trauma for the residents. Existing law authorizes and requires the department, in the event of a temporary license suspension or revocation, to comply with specified procedures relating to the transfer of residents, including requiring the department to contact and work with any local agency that may have placement or advocacy responsibility for the residents of a residential care facility for the elderly, as specified, to locate alternative placement sites and contact responsible relatives. Existing law requires, upon an order to revoke a

license, a licensee to provide a 60-day written notice of license revocation that may lead to closure to the resident and the resident's responsible person within 24 hours of receipt of the department's order of revocation. Existing law requires a resident who transfers from the facility during that 60-day period to be entitled to a refund of preadmission fees in accordance with specified provisions.

This bill would require, if the Director of Social Services determines at any time during relocation of residents that it is necessary to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department to take any necessary action to minimize trauma for the residents, including, but not limited to, preparing the residents' records and medications for transfer and checking in on the status of ~~all~~ *each* transferred ~~residents~~ *resident* within 24 hours of transfer. The bill would additionally require the department to contact the Office of the State Long-Term Care Ombudsman to locate alternative placement sites for residents. The bill would also require, upon an order to *temporarily* suspend a license *or a final order to suspend a license*, a licensee to provide a ~~60-day~~ written notice of license suspension *or revocation* to the resident or resident's responsible person ~~within 24 hours of receipt of the department's order of suspension~~, *as specified*, and would require a resident who transfers due to the ~~resident being issued a 60-day receipt of a notice of a temporary suspension or revocation of a license~~ to be entitled to a refund of preadmission fees.

This bill would prohibit, upon receipt of an order to *temporarily* suspend or revoke a license, a licensee from accepting new residents or entering into admission agreements for new residents. The bill would generally make a licensee who fails to comply with the requirements of these provisions liable for civil penalties in the amount of \$500 per violation per day for each day that the licensee is in violation of these provisions until the violation has been corrected. The bill would authorize a current or former resident of a residential care facility for the elderly covered under these provisions to bring a civil action against any person, firm, partnership, or corporation ~~who~~ *that* owns, operates, establishes, manages, conducts, or maintains a residential care facility for the elderly who violates the specified rights of ~~a~~ *the* resident.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1569.525 of the Health and Safety Code
2 is amended to read:

3 ~~1569.525. (a) (1) If the director is reasonably contemplating~~
4 ~~a temporary suspension or revocation of any license, the department~~
5 ~~shall provide the Office of the State Long-Term Care Ombudsman~~
6 ~~with a precautionary notification so that the office may properly~~
7 ~~prepare to intervene if and when necessary.~~

8 ~~(2)~~

9 1569.525. (a) If the director determines that it is necessary to
10 temporarily suspend or to revoke any license of a residential care
11 facility for the elderly in order to protect the residents or clients
12 of the facility from physical or mental abuse, abandonment, or any
13 other substantial threat to health or safety pursuant to Section
14 1569.50, the department shall make every effort to minimize
15 trauma for the residents.

16 (b) (1) The department shall contact the Office of the State
17 Long-Term Care Ombudsman and any local agency that may have
18 placement or advocacy responsibility for the residents of a
19 residential care facility for the elderly after a decision is made to
20 temporarily suspend or to revoke the license of the facility and
21 prior to its implementation. The department shall work with these
22 agencies, and the licensee if the director determines it to be
23 appropriate, to locate alternative placement sites and to contact
24 relatives responsible for the care of these residents.

25 (2) *If the director is reasonably contemplating a temporary*
26 *suspension or revocation of any license, the department shall notify*
27 *the Office of the State Long-Term Care Ombudsman pursuant to*
28 *Section 1569.335.*

1 (c) The department shall use physicians and surgeons and other
2 medical personnel deemed appropriate by the department to provide
3 onsite evaluation of the residents and assist in any transfers.

4 (d) The department shall require the licensee to prepare and
5 submit to the licensing agency a written plan for relocation and
6 compliance with the terms and conditions of the approved plans,
7 and to provide other information as necessary for the enforcement
8 of this section.

9 (e) Upon receipt of an order to *temporarily* suspend or revoke
10 a license, the licensee shall be prohibited from accepting new
11 residents or entering into admission agreements for new residents.

12 (f) Upon an order to *temporarily* suspend a license, ~~the licensee~~
13 ~~shall provide a 60-day written notice of the license suspension to~~
14 ~~the resident or resident's responsible person within 24 hours of~~
15 ~~receipt of the department's order of suspension. the following shall~~
16 ~~apply:~~

17 (1) *The licensee shall provide written notice of the temporary*
18 *suspension to the resident and the resident's responsible person,*
19 *if applicable, as soon as practically possible, but no later than*
20 *within 24 hours of receipt of the department's temporary*
21 *suspension order.*

22 (2) *The department may secure, or permit the licensee to secure,*
23 *the services of a person who is not an immediate family member*
24 *of the licensee or an entity that is not owned by the licensee to*
25 *manage the day-to-day operations of the facility until the matter*
26 *is heard pursuant to Section 1569.50, and for at least 60 days*
27 *thereafter, if a proposal that includes both of the following is*
28 *submitted to the department as soon as practically possible*
29 *following the licensee's receipt of the department's temporary*
30 *suspension order:*

31 (A) *A completed "Application for a Community Care Facility*
32 *or Residential Care Facility for the Elderly License" form (LIC*
33 *200), or similar form as determined by the department, signed and*
34 *dated by both the licensee and the person or entity described in*
35 *this paragraph.*

36 (B) *A copy of the executed agreement between the licensee and*
37 *the person or entity described in this paragraph that delineates*
38 *the roles and responsibilities of each party and specifies that the*
39 *person or entity described in this paragraph shall have the full*
40 *authority necessary to operate the facility, in compliance with all*

1 *applicable laws and regulations, and without interference from*
2 *the licensee.*

3 (g) Upon ~~an~~ a final order to revoke a license following any
4 applicable hearings required under this article, except when
5 following the temporary suspension of a license pursuant to Section
6 1569.50 that led to the transfer of all residents, the following shall
7 apply:

8 (1) The licensee shall provide a 60-day written notice of license
9 revocation that may lead to closure to the resident and the resident's
10 responsible person within 24 hours of receipt of the department's
11 final order of revocation.

12 (2) The department shall permit the licensee to secure the
13 services of a person who is not an immediate family member of
14 the licensee or an entity that is not owned by the licensee to manage
15 the day-to-day operations of the residential care facility for the
16 elderly for a period of at least 60 days, ~~provided that all of the~~
17 ~~following conditions are met:~~

18 ~~(A) A~~ if a proposal that includes both of the following is
19 submitted to the department within 72 hours of the licensee's
20 receipt of the department's final order of revocation that includes
21 both of the following: revocation:

22 (i)
23 (A) A completed "Application for a Community Care Facility
24 or Residential Care Facility for the Elderly License" form (LIC
25 200), or similar form as determined by the department, signed and
26 dated by both the licensee and the person or entity described in
27 ~~paragraph (2).~~ this paragraph.

28 (ii)
29 (B) A copy of the executed agreement between the licensee and
30 the person or entity described in ~~paragraph (2)~~ this paragraph that
31 delineates the roles and responsibilities of each party and specifies
32 that the person or entity described in ~~paragraph (2)~~ this paragraph
33 shall have the full authority necessary to operate the facility, in
34 compliance with all applicable laws and regulations, and without
35 interference from the licensee.

36 ~~(B)~~
37 (h) (1) The person or entity described in paragraph (2) of
38 subdivision (f) or paragraph (2) of subdivision (g) shall be currently
39 licensed and in substantial compliance to operate a residential care
40 facility for the elderly that is of comparable size or greater and has

comparable programming to the facility. For purposes of this subparagraph, the following definitions apply:

(i)

(A) “Comparable programming” includes, but is not limited to, dementia care, hospice care, and care for residents with exempted prohibited health care conditions.

(ii)

(B) “Comparable size” means a facility capacity of 1 to 15 residents, 16 to 49 residents, or 50 or more residents.

(C)

(2) The person or entity described in paragraph (2) of subdivision (f) or paragraph (2) of subdivision (g) shall not be subject to the application fee specified in Section 1569.185.

(D)

(3) If the department denies a proposal to secure the services of a person or entity pursuant to paragraph (2) of subdivision (f) or paragraph (2) of subdivision (g), this denial shall not be deemed a denial of a license application subject to the right to a hearing under Section 1569.22 and other procedural rights under Section 1569.51.

~~(3)(A)~~

(i) (1) Notwithstanding Section 1569.651 or any other law, for paid preadmission fees, a resident who transfers from the facility due to the resident being issued a 60-day notice pursuant to subdivision (f) or paragraph (1), notice of a temporary suspension or revocation of a license pursuant to this section is entitled to a refund in accordance with all of the following:

(i)

(A) A 100-percent refund if preadmission fees were paid within six months of the either notice of closure required by paragraph (1) or subdivision (f) this section.

(ii)

(B) A 75-percent refund if preadmission fees were paid more than 6 months, but not more than 12 months, before the either notice of closure required by paragraph (1) or subdivision (f) this section.

(iii)

(C) A 50-percent refund if preadmission fees were paid more than 12 months, but not more than 18 months, before the either

1 notice of closure required by ~~paragraph (1) or subdivision (f) this~~
2 ~~section.~~

3 ~~(iv)~~

4 (D) A 25-percent refund if preadmission fees were paid more
5 than 18 months, but not more than 25 months, before ~~the either~~
6 ~~notice of closure required by paragraph (1) or subdivision (f) this~~
7 ~~section.~~

8 ~~(B)~~

9 (2) No preadmission fee refund is required if preadmission fees
10 were paid 25 months or more before ~~the either notice of closure~~
11 ~~required by paragraph (1) or subdivision (f) this section.~~

12 ~~(C)~~

13 (3) The preadmission fee refund required by this paragraph shall
14 be paid within 15 days of issuing ~~the either notice of closure~~
15 ~~required by paragraph (1) or subdivision (f) this section.~~ In lieu of
16 the refund, the resident may request that the licensee provide a
17 credit toward the resident's monthly fee obligation in an amount
18 equal to the preadmission fee refund due.

19 (4) If a resident transfers from the facility ~~during the 60-day~~
20 ~~period after the issuance of an order to suspend or revoke the~~
21 ~~license due to the revocation of a license,~~ and the resident gives
22 notice at least five days before leaving the facility, ~~or if the transfer~~
23 ~~is due to a temporary suspension of the license order,~~ the licensee
24 shall refund to the resident or his or her legal representative a
25 proportional per diem amount of any prepaid monthly fees at the
26 time the resident leaves the facility and the unit is vacated.
27 Otherwise the licensee shall pay the refund within seven days from
28 the date that the resident leaves the facility and the unit is vacated.

29 ~~(5)~~

30 (j) Within 24 hours after ~~all residents who are each resident~~
31 ~~who is transferring pursuant to these provisions have~~ has left the
32 facility, the licensee that had his or her license *temporarily*
33 *suspended or revoked* shall, based on information provided by the
34 resident or the resident's ~~legal representative~~ *responsible person*,
35 submit a final list of names and new locations of all residents to
36 the department and the local ombudsman program.

37 ~~(h)~~

38 (k) If at any point during ~~the relocation process or following a~~
39 ~~temporary suspension or revocation of a license~~ the director
40 determines that ~~it is necessary to protect~~ *there is a risk to the*

1 residents of a facility from physical or mental abuse, abandonment,
2 or any other substantial threat to health or safety, the department
3 shall take any necessary action to minimize trauma for the
4 residents. ~~The department is responsible for the health and safety~~
5 ~~of all residents until all residents have been appropriately placed.~~
6 ~~These responsibilities shall include, residents, including, but not~~
7 ~~be~~ limited to, all of the following:

8 (1) Contact any local agency that may have placement or
9 advocacy responsibility for the residents, and work with those
10 agencies to locate alternative placement sites.

11 (2) Contact the residents' relatives, legal representatives,
12 authorized agents in a health care directive, or responsible parties.

13 (3) Assist in the transfer of residents, and, if necessary, arrange
14 or provide transportation.

15 (4) Provide onsite evaluation of the residents and use any
16 medical personnel deemed appropriate by the department to provide
17 onsite evaluation of the residents and assist in any transfers.

18 (5) Arrange for or provide care and supervision.

19 (6) Distribute medications.

20 (7) Arrange for the preparation and service of meals and snacks.

21 (8) Prepare the residents' records and medications for transfer
22 of each resident.

23 (9) Assist in any way necessary to facilitate a safe transfer of
24 all residents.

25 (10) Check on the status of each transferred ~~residents~~ *resident*
26 within 24 hours of transfer.

27 ~~(i)~~

28 *(l)* The participation of the department and local agencies in the
29 relocation of residents from a residential care facility for the elderly
30 shall not relieve the licensee of any responsibility under this
31 section. A licensee that fails to comply with the requirements of
32 this section shall be required to reimburse the department and local
33 agencies for the cost of providing these services. If the licensee
34 fails to provide the services required in this section, the department
35 shall request that the Attorney General's office, the city attorney's
36 office, or the local district attorney's office seek injunctive relief
37 and damages.

38 ~~(j)~~

39 *(m)* Notwithstanding Section 1569.49, a licensee who fails to
40 comply with the requirements of this section shall be liable for

1 civil penalties in the amount of five hundred dollars (\$500) per
2 violation per day for each day that the licensee is in violation of
3 this section, until the violation has been corrected. The civil
4 penalties shall be issued immediately following the written notice
5 of violation.

6 ~~(k)~~

7 (n) A current or former resident of a residential care facility for
8 the elderly covered under this ~~section~~, *section* may bring a civil
9 action against any person, firm, partnership, or corporation ~~who~~
10 *that* owns, operates, establishes, manages, conducts, or maintains
11 a residential care facility for the elderly ~~who that~~ violates the rights
12 of ~~a the~~ resident, as set forth in this section. Any person, firm,
13 partnership, or corporation ~~who that~~ owns, operates, establishes,
14 manages, conducts, or maintains a residential care facility for the
15 elderly ~~who that~~ violates this section shall be responsible for the
16 acts of the facility employees *in violating this section* and shall be
17 liable for costs and attorney's fees. The residential care facility for
18 the elderly may also be enjoined from permitting the violation to
19 continue. The remedies specified in this section shall be in addition
20 to any other remedy provided by law.

21 ~~(t)~~

22 (o) This section shall not preclude the department from
23 amending the effective date in the order of the suspension or
24 revocation of a license and closing the facility, or from pursuing
25 any other available remedies if necessary to protect the health and
26 safety of the residents in care.

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.